

REMARKS

This application is amended in a manner believed to place it in condition for allowance at the time of the next Official Action.

Applicants respectfully note that there are two errors in the outstanding Official Action:

(1) The Office Action Summary indicates the action is Final. The Patent Application Information Retrieval (PAIR) also indicate the Official Action is Final. However, Applicants understand that the outstanding Official Action is a Non-Final Action, as it is the first action on the merits. Accordingly, entry and consideration of this amendment is respectfully requested.

(2) The Official Action withdraws all of claims 51-69 as being directed to non-elected species. Applicants acknowledge that the Examiner imposed an election of species requirement in a telephonic interview with the undersigned on June 27, 2007, and that polybiguanide and polybiguanide salt, i.e., as recited in claim 32, were the elected species. However, applicants respectfully submit that claims 54 and 65 recite polyhexamethylene-biguanide, or the salt thereof, and, thus, claims 54 and 65 are readable on the elected species. See, e.g., for example, page 5, lines 4-12 in light of the Examples.

Applicants acknowledge with appreciation the withdrawal of the restriction requirement and examination of claims 15, 17-50 and 70-75, as also stated by the Examiner in the telephonic interview with the undersigned on June 27, 2007.

Applicants respectfully request that the election of species requirement be withdrawn, as claims 51-53, 57, 60-64, 67, 68, 76-82 are directed to additional active agents, which may be added to the composition of claim 15.

Claim 15, 17-20, 25-36, 38-50, 51, 53, 57, 59, 61-63 and 69 are amended.

Claims 76-82 are new, and are directed to the non-elected other active agents.

Support for the amended and new claims may be found, for example, at specification page 5, lines 4-12 in light of the Examples, and the paragraph bridging pages 5 and 6.

Claims 32, 37, 54-56, 65, 66 are cancelled.

Claims 15, 17-31, 33-36, 38-53, 57-64 and 67-82 remain pending in the application.

Claims 50-64, 66-69, and 76-82 are withdrawn for being directed to non-elected active agent species.

The Official Action rejects claims 34-36 under 35 USC §112, second paragraph, as being indefinite. This rejection is respectfully traversed.

The position of the Official Action is that the expression "said weight" renders the claims indefinite because it is unclear to which component said weight refers.

The claims are amended to refer to the actual component name instead of "said weight". Thus, withdrawal of the rejection is respectfully requested.

Claims 15, 17-30, 40-50 and 70-73 are rejected under 35 USC §103(a) as being unpatentable over WALKER U.S. 6,375,727 (WALKER) in view of BELL et al. U.S. 6,172,117 (BELL). This rejection is respectfully traversed.

The claim 15 now recites the features of claim 32, 37, as well as claims 54/65.

WALKER is offered for teaching an iodine containing IPBC, water, and glycol. The Official Action recognizes that WALKER does not disclose a stabilizer.

WALKER further fails to disclose or suggest polyhexamethylene biguanide, or a salt thereof, wherein the weight ratio of said IPBC to said polyhexamethylene biguanide is from about 100:1 to about 1:100, as now recited in independent claim 15.

BELL is offered for teaching formic acid added to biocidal preservative compositions. However, regardless of the ability of BELL to teach that for which it is offered, BELL cannot remedy the shortcomings of WALKER for reference purposes.

BELL also fails to disclose or suggest adding polyhexamethylene biguanide, or a salt thereof.

As the proposed combination fails to teach the features of independent claim 15, the proposed combination cannot render claim 15 obvious, or the claims which depend therefrom.

With respect to claims 71-73 in particular, directed to product-by-process claims, it is noted that the recited process steps result in an increased stability. See, e.g., page 8, lines 18-33.

Therefore, withdrawal of the rejection is respectfully requested.

Claims 31-44 are rejected under 35 USC §103(a) as being unpatentable over WALKER U.S. 6,375,727 (WALKER) in view of BELL et al. U.S. 6,172,117 (BELL), further in view of STOCKEL U.S. 2003/0032768 A1 (STOCKEL). This rejection is respectfully traversed.

The features of claim 32, 37, as well as claims 54/65, are recited in claim 15.

WALKER and BELL are offered for the same reasons as discussed above.

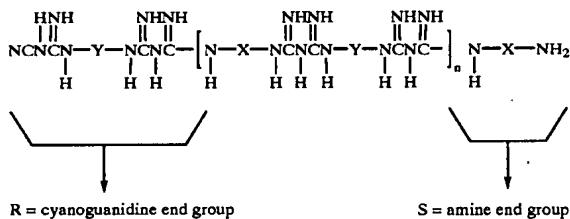
STOCKEL is offered for teaching polybiguanides useful as an active ingredient in fungicidal or bactericidal composition in an amount of 1-1000 ppm.

However, STOCKEL fails to specifically disclose a preference for polyhexamethylene biguanide, or a salt thereof.

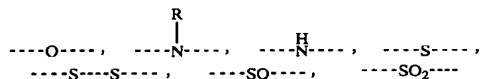
Indeed, STOCKEL requires a Structure I:

Structure 1

[0007]



[0008] wherein X and Y are the same or different organic bridging groups. Chemically X and/or Y can be aliphatic, cycloaliphatic, heterocyclic, aryl, alkaryl, aralkyl, and combinations thereof. When X and/or Y is aliphatic the alkylene radical is from C₂-C₁₄₀, or the alkylene radical can be interrupted by oxygen, nitrogen or sulfur, e.g.,



[0009] and the like where R is alkyl or aryl.

However, to even approach the claimed active ingredient, i.e., polyhexamethylene biguanide, one must (1) select an aliphatic group from: aliphatic, cycloaliphatic, heterocyclic, aryl, alkaryl, aralkyl, and combinations thereof, (2) select both X and Y as hexamethylene from a group of 2 to 140 carbon alkylene radicals, and (3) select a non-substituted alkylene radical without any guidance from STOCKEL.

Moreover, STOCKEL fails to disclose or suggest a weight ratio of IPBC to polyhexamethylene biguanide of from about 100:1 to about 1:100.

Accordingly, the proposed combination fails to teach the claimed invention and cannot render obvious claims 31-44, nor claims 15 17-30, 45-49, and 70-75.

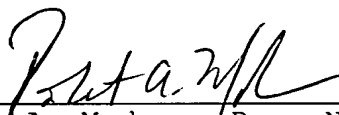
Therefore, withdrawal of the rejection is respectfully requested.

In view of the amendment to the claims and the forgoing remarks, applicants believe that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Robert A. Madsen, (Reg. No. 58,543
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

RM/mjr